

DO

## SURFACE TRANSPORTATION BOARD

## DECISION

Docket No. AB 55 (Sub-No. 694X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN MCMINN COUNTY, TENN.

Decided: August 24, 2012

This decision grants a request to extend the time to negotiate a trail use/rail banking agreement but denies a request to extend the public use condition.

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 6.4-mile rail line, known as the Athens Branch, on its Southern Region, Huntington-West Division, KD Subdivision, extending between milepost OKW 327, at Englewood, and milepost OKW 333.4, at Athens, in McMinn County, Tenn. Notice of the filing was served and published in the Federal Register on May 21, 2009 (74 Fed. Reg. 23,926).

By decision and notice of interim trail use or abandonment (NITU) served on August 13, 2009 (August 2009 decision), the proceeding was reopened and a 180-day period was authorized for McMinn County (the County), the City of Athens, and the City of Englewood to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).<sup>1</sup> By a series of decisions, the NITU negotiating period was extended until August 27, 2012.

By letter filed on July 31, 2012, the County submitted a request to extend both the NITU negotiating period and the public use condition for an additional 180 days. The County states that additional time is needed to continue negotiations and to conduct environmental testing. In a response filed on August 1, 2012, CSXT agrees to the County's request for a 180-day extension of the negotiating period under the NITU but opposes the imposition of a second public use condition.

Where, as here, the carrier is willing to continue trail use negotiations, the NITU negotiating period may be extended.<sup>2</sup> An extension of the NITU negotiating period will promote

---

<sup>1</sup> The August 2009 decision also made the exemption subject to salvage conditions and a public use condition.

<sup>2</sup> See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for an additional 180 days from August 27, 2012, to February 23, 2013.<sup>3</sup> If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012).

The County's request to extend the public use condition, however, will be denied. The public use condition, which is limited by statute to 180 days, expired on March 11, 2010, and may not be extended. See 49 U.S.C. § 10905; 49 C.F.R. § 1152.28(b); and Rail Abans.—Public Use Conditions—Revision, 8 I.C.C.2d 392, 395-98 (1992).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The County's request to extend the NITU negotiating period for an additional 180 days is granted.
2. The NITU negotiating period is extended from August 27, 2012, to February 23, 2013.
3. The County's request to extend the public use condition is denied.
4. If an agreement for interim trail use/rail banking is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).
5. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

---

<sup>3</sup> Under 49 C.F.R. § 1152.29(e)(2), extension of the NITU negotiating period creates a regulatory barrier to consummation of the abandonment. For that reason, if the NITU negotiating period expires without the parties reaching an agreement, CSXT's notice of consummation will be due not later than 60 days thereafter. See 49 C.F.R. § 1152.29(e)(2).